

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-207856

DATE: September 13, 1982

MATTER OF: Urban Kinnunen - Irregular Appointment

DIGEST: An individual was appointed from a PACE register prior to his completion of the education requirements for PACE certification due to agency error. He subsequently completed those requirements, and his appointment was therefore allowed to stand by OPM. He is entitled to retain the compensation he received for the period of the irregular appointment, to credit for all accrued leave, and to service credit for leave accrual purposes. Allowance of service credit for other purposes, including retirement credit, is within the jurisdiction of the Office of Personnel Management.

This decision is in response to a request from George A. Blakeslee, Chief, Civilian Personnel Division, U.S. Army Materiel Development and Readiness Command, requesting our decision concerning the payment of salary to an individual who was irregularly appointed as a civilian employee of the Department of the Army. The request for decision was initiated by a subordinate command, the U.S. Army Tank - Automotive Command (TACOM) in Warren, Michigan.

The individual in question, Mr. Urban Kinnunen, was selected from PACE Certificate No. CHPI-0177, dated January 21, 1981, and was appointed by TACOM on March 11, 1981. Although the certificate made it clear that agencies were to verify that candidates had satisfied the educational requirements for PACE qualification, TACOM failed to make that verification. Incident to a survey of civilian personnel management, the U.S. Army Civilian Personnel Center in Atlanta, Georgia, issued a report dated August 24, 1981, informing TACOM that Mr. Kinnunen's appointment was a regulatory violation because he had not met the educational requirements at the time of his appointment. The TACOM responded that, subsequent to the report, Mr. Kinnunen had graduated from Wayne State University and had obtained the necessary grade point average for PACE qualification. The

Civilian Personnel Center in turn responded that the case could not be closed until TACOM had obtained permission from the Office of Personnel Management (OPM) to let the appointment stand.

The TACOM contacted the Chicago area office of OPM concerning Mr. Kinnunen's situation. That office, after discussions with the Non-Competitive Staffing and College Relations Branch of OPM's central office, informed TACOM that because Mr. Kinnunen had met the PACE qualifications requirements, his appointment could be allowed to stand. However, the OPM office stated that the legality of the payment of Mr. Kinnunen's salary for the period between his irregular appointment and the time he obtained the necessary qualifications for that appointment was for determination by the General Accounting Office.

In Victor M. Valdez, 58 Comp. Gen. 734 (1979), we held that where an individual has been appointed to a position and the appointment is subsequently found to have been improper or erroneous, that person is entitled to retain compensation already paid, to receive unpaid compensation, to receive credit for good faith service for purposes of accrual of annual leave, and, if separation occurs, a lump-sum payment for unused leave, unless--

"(1) the appointment was made in violation of an absolute statutory prohibition, or

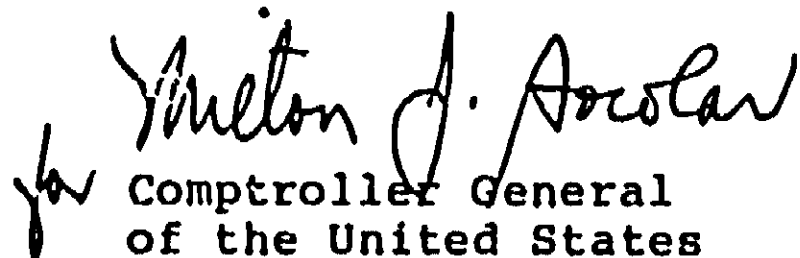
"(2) the employee was guilty of fraud in regard to the appointment or deliberately misrepresented or falsified a material matter."

In Valdez, for the first time, we allowed service credit for leave accrual purposes and a lump-sum payment for accrued leave. Valdez impliedly allows credit for accrued annual leave if an employee is not separated or is rehired. In Thomas C. Collins, B-197400, December 10, 1981, we followed Valdez and held that an individual who was terminated after his appointment was found to be erroneous and was subsequently reappointed, was entitled to a lump-sum leave payment and to service credit for leave accrual purposes. We also held that he was entitled to a recrediting of his accrued sick leave. Valdez, however, does not affect our cases concerning persons who serve without an appointment or who serve after their appointments have expired. We

have limited the application of Valdez to situations where there has been an irregular or erroneous appointment.

Because Mr. Kinnunen's appointment was irregular, we shall apply the Valdez rule to determine his entitlement. There was no statutory bar to his appointment and we have been informed that there was no misrepresentation on his part. Therefore, he is clearly entitled to retain the compensation he has received. We have been informed that there is no question concerning unpaid compensation--Mr. Kinnunen continued to receive his salary throughout the period in question. Not only is Mr. Kinnunen entitled to retain the salary he has received, he is also entitled to credit for all annual and sick leave earned during that period and to service credit for leave accrual purposes.

The question of whether Mr. Kinnunen might be entitled to service credit for retirement purposes for the period of his erroneous appointment should be referred to OPM.
Thomas C. Collins, B-197400, December 10, 1981.


for Comptroller General
of the United States